

John H. Scott, SBN 72578
Lizabeth N. de Vries, SBN 227215
W. Gordon Kaupp, SBN 226141
SCOTT LAW FIRM
1388 Sutter Street, Suite 715
San Francisco, California 94109
Telephone: (415) 561-9601
Facsimile: (415) 561-9609
john@scottlawfirm.net
liza@scottlawfirm.net
gordon@scottlawfirm.net

Attorneys for Plaintiffs and Counter-Defendants,
JESSE J. BYRD, MALIK BRITT,
RASHAD CONLEY and ANDREW EMIL ARMSTRONG

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JESSE J. BYRD, MALIK BRITT, RASHAD
CONLEY and ANDREW EMIL
ARMSTRONG,

Plaintiffs,

vs.

THE CITY AND COUNTY OF SAN
FRANCISCO; SAN FRANCISCO POLICE
DEPARTMENT; ROSELO PASCUA; ALEX
RODATOS; KELVIN SANDERS;
JONATHAN CATLETT; RICHAD SOARES;
WILLIAM ESCOBAR, and DOES 1-20,
inclusive.

Defendants.

THE CITY AND COUNTY OF SAN
FRANCISCO,

vs.

MALIK BRITT, CAREEM CONLEY, AND
RASHAD CONLEY, Roes 1-30, inclusive.

Counter-Defendants.

) **Case No. C 11-1742 DMR**
)
) **[CORRECTED]**
) **SECOND AMENDED COMPLAINT**
) **FOR DAMAGES FOR VIOLATION**
) **OF CIVIL RIGHTS**
) **(42 U.S.C. SECTION 1981 and 1983)**

) **JURY TRIAL DEMANDED**

COME NOW PLAINTIFFS, who complain of Defendants, and each of them, and allege as follows:

I. JURISDICTION AND VENUE

1. This action arises under 42 U.S.C. § 1983. This Court has jurisdiction over these claims under 28 U.S.C. §§ 1331 and 1343.

2. The acts and omissions alleged herein occurred in San Francisco, California. Venue for this action lies in the United States District Court for the Northern District of California under 28 U.S.C. § 1391(b).

II. PARTIES

3. Plaintiff JESSE J. BYRD, is an African-American man who was at all relevant times a resident of 1305 Bowdoin Street, San Francisco, California. Mr. Byrd is the grandfather of Plaintiffs Malik Britt, Rashad Conley, and Andrew Emil Armstrong.

4. Plaintiff MALIK BRITT, is an African-American man and a resident of California. He was a minor at the time of the incident. Mr. Britt is a grandson of Plaintiff Jesse Byrd and the youngest brother of Plaintiff Rashad Conley and Careem Conley. At all times relevant on April 12, 2009, Mr. Britt was present at 1305 Bowdoin Street, San Francisco, California.

5. Plaintiff RASHAD CONLEY, is an African-American man and resident of California. Mr. Conley is a grandson of Plaintiff Jesse Byrd, and the eldest brother of Plaintiff Malik Britt. At all times relevant on April 12, 2009, Mr. Rashad Conley was present at 1305 Bowdoin Street, San Francisco, California.

6. Plaintiff ANDREW EMIL ARMSTRONG, is an African-American man and resident of San Francisco, California. Mr. Armstrong is a grandson of Plaintiff Jesse Byrd. At all times relevant on April 12, 2009, Mr. Armstrong was present at 1305 Bowdoin Street, San Francisco, California.

7. Defendant CITY AND COUNTY OF SAN FRANCISCO (hereinafter "CITY") is both a municipal corporation and a county duly organized and existing under the laws of the State of California, and was at all relevant times the public employer of the individual defendants.

1 8. Defendant SAN FRANCISCO POLICE DEPARTMENT is the public entity that
2 directly employed the individual Defendants and was responsible for their hiring, training, and
3 supervision.

4 9. Defendants ALEX RODATOS, KELVIN SANDERS, JONATHAN CATLETT,
5 ROSELO PASCUA, RICHARD SOARES, and WILLIAM ESCOBAR are, and were at all
6 relevant times, San Francisco Police Officers.

7 10. Defendants DOES 1 through 20 are San Francisco Police Officers whose identities are
8 unknown to the Plaintiffs. Plaintiffs shall amend their Complaint to state the true names of these
9 DOE defendants when they are ascertained.

10 11. All Defendants acted in concert and within the course and scope of their employment
11 with the City and County of San Francisco and the San Francisco Police Department in
12 committing the acts complained of herein.

13 **III. STATEMENT OF FACTS**

14 12. On the afternoon of Easter Sunday, April 12, 2009, Plaintiffs Malik Britt, Rashad
15 Conley, Andrew Emil Armstrong and other family members were celebrating Easter at 1305
16 Bowdoin Avenue, San Francisco – the home of their grandfather, Plaintiff Jesse Byrd.
17 Meanwhile, numerous officers from the San Francisco Police Department had gathered nearby to
18 detain an African-American parolee suspected of being located at 1315 Bowdoin Street, two
19 houses down the street.

20 13. Defendants Roselo Pascua, Kelvin Sanders and Alex Rodatos observed Plaintiff Malik
21 Britt enter the back porch from inside 1305 Bowdoin Street. At gunpoint, Defendants Rodatos,
22 Pascua and Sanders ordered Malik Britt to freeze and put his hands up. Defendants Rodatos,
23 Soares, Pascua, Catlett and other officers climbed over fences and entered the backyard of Jesse
24 Byrd's property. They did not have a warrant, permission or any other legal basis to enter the
25 premises and detain Plaintiff Britt. While Officers Rodatos and Ravano were placing Malik Brit
26 in handcuffs, Defendant Soares struck Malik Britt with his baton.

27 14. While Defendants Rodatos, Soares and Catlett were on Plaintiff Jesse Byrd's property
28 Careem Conley and Rashad Conley exited the back of the house. Careem Conley and Rashad

1 Conley asked the officers why they were on the porch and protested their treatment of Britt. In
2 response Rashad Conley was beaten.

3 15. After Malik Britt and Careem Conley were handcuffed officers entered Mr. Byrd's
4 home, without a warrant, and searched his home.

5 16. While these events were occurring, Plaintiffs Jesse Byrd and Andrew Armstrong
6 exited the front of the residence. Soon after exiting the residence, Defendant Sgt. Escobar
7 directed Officer Gonzalez to detain Plaintiff Armstrong. Gonzalez grabbed Armstrong, pointed
8 his gun at him and placed him into handcuffs. At Sgt. Escobar's direction and under his
9 supervision, Officer Gonzalez detained Armstrong for approximately one hour.

10 17. Plaintiff Malik Britt was placed into a police car, taken to a police station, and released
11 to his mother approximately forty-five minutes later.

12 18. The Defendant officers had no arrest or search warrant for 1305 Bowdoin Street or for
13 any of the Plaintiffs. The Defendant Officers did not receive permission to enter Mr. Byrd's
14 premises. The Defendants had no lawful basis to enter the premises, nor did they have a lawful
15 basis to detain any of the Plaintiffs or use force against them.

16 **IV. DAMAGES**

17 19. As a result of the acts and omissions alleged herein, plaintiffs have suffered pain,
18 deprivation of liberty, anxiety, fear, and emotional distress in an amount to be determined
19 according to proof.

20 20. Plaintiffs were required to retain counsel and are entitled to reasonable attorneys' fees
21 should they prevail in this action.

22 21. The acts and/or omissions of defendants, as alleged in this Complaint, were willful,
23 reckless, malicious, oppressive and/or done with a conscious or reckless disregard for the
24 constitutional rights of the plaintiffs. Plaintiffs therefore pray for an award of punitive and
25 exemplary damages according to proof.

FIRST CAUSE OF ACTION

42 U.S.C. § 1983: UNREASONABLE SEARCH AND SEIZURE

22. Plaintiffs hereby incorporate by reference all allegations set forth in paragraphs 1 through 21 above.

23. In doing the acts and/or omissions alleged herein, Defendants Alex Rodatos, Roselo Pascua, Kelvin Sanders, Richard Soares, and Jonathan Catlett unreasonably and unlawfully entered Plaintiff Jesse Byrd's property and residence in violation of his rights under the Fourth Amendment to the United States Constitution. Defendants Alex Rodatos, Roselo Pascua, Kelvin Sanders, Richard Soares, Jonathan Catlett, Miguel Gonzalez and William Escobar unlawfully detained Plaintiffs Malik Britt, Rashad Conely and Andrew Emil Armstrong. Defendants Alex Rodatos, Richard Soares, and Jonathan Catlett used unnecessary force against Malik Britt and Rashad Conley in violation of their rights under the Fourth Amendment to the United States Constitution.

WHEREFORE, Plaintiffs pray for relief as described below.

SECOND CAUSE OF ACTION

42 U.S.C. § 1981: UNEQUAL TREATMENT UNDER THE LAW BECAUSE OF RACE

24. Plaintiffs incorporate by reference all allegations set forth in paragraphs 1 through 23, above.

25. The Defendants subjected Plaintiffs to unequal treatment because their race; African-American.

26. The City and County of San Francisco is vicariously liable for the acts of the individual Defendant officers.

WHEREFORE, Plaintiffs pray for relief as described below.

JURY TRIAL DEMAND

Plaintiffs hereby request a jury trial on all issues.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seek relief as follows:

1. For compensatory damages;

2. For general damages according to proof;
3. For punitive damages against each individual Defendant officers, according to proof;
4. For costs of suit and reasonable attorney fees; and
5. For all other relief as the Court may deem just and proper.

Dated: July 2, 2012

SCOTT LAW FIRM

By: /s/ Gordon Kaupp
W. Gordon Kaupp
Attorneys for Plaintiffs and
Counter-Defendants
JESSE J. BYRD, MALIK
BRITT, RASHAD CONLEY
and ANDREW EMIL
ARMSTRONG